

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:)	CHAPTER 13
)	CASE NO. 05-50788-JDW
RONALD WALLER and)	
JOANN WALLER,)	
)	
DEBTORS.)	

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtors: Ronald and Joann Waller, pro se
1015 Calhoun Street
Macon, Georgia 31201

For Creditor: Robert A. Fricks
239-B Smithville Church Road
Warner Robins, Georgia 31088

MEMORANDUM OPINION

This matter comes before the Court on Debtors' motion to hold person in contempt for violation of the automatic stay. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(G). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

Debtors Ronald and Joann Waller filed a Chapter 13 petition on February 28, 2005, at 1:54 p.m. It was their fourth Chapter 13 petition in five years. Each of their three previous cases were dismissed prior to completion. Case number 01-50817 was filed February 26, 2001, and dismissed on August 20, 2002. Case number 02-51230 was filed on March 20, 2002, and dismissed on October 11, 2002. Case number 02-53304 was filed on August 5, 2002, and dismissed on December 6, 2002.

Prior to filing the current case, Debtors sued First National Investments, LLC, twice in state court and once in federal district court in connection with an debt allegedly owed to First National and secured by Debtors' residence. The first state court case was dismissed for improper service. The second case went to trial before a jury, and the court granted a directed verdict to First National. Both cases resulted in a temporary injunction of proceedings initiated by First National to foreclose on Debtors' house. The federal case was dismissed as frivolous. Those cases, in addition to the prior bankruptcy filings amount to at least five foreclosure proceedings stayed by a state or federal court order.

After all those cases had been resolved, First National attempted its sixth foreclosure, with the auction scheduled for March 1, 2005. Upon filing his bankruptcy case on February 28, 2005, assuming the automatic stay would enjoin this sixth foreclosure, Mr. Waller phoned the office of Robert Fricks, counsel for First National, and informed his secretary of the bankruptcy case number. Mr. Fricks received the message on February 28. According to Mr. Fricks, when he was unable to verify the filing through the Court's PACER system, he told First National to proceed with the foreclosure sale. First National held the sale and purchased the property for approximately \$28,700, which they have contracted to sell to a third party for \$28,000.

In a later search of PACER, Mr. Fricks confirmed that Debtors had filed a bankruptcy petition on February 28, so the automatic stay had been in effect at the time of the foreclosure sale. First National filed a motion for retroactive annulment of the automatic stay on March 3, 2005. Debtors objected to the motion on the ground that the debt is "unverified" and that First National has violated the Fair Debt Collection Practices Act. The Court held a hearing on the motion on March 7, 2005. At the conclusion of the hearing, the Court entered an order granting the motion for retroactive stay relief. An appeal of that order currently is pending in the District Court. On March 11, 2005, Debtors filed a motion to hold Mr. Fricks in contempt for violation of the automatic stay. For the following reasons, the motion will be denied.

Conclusions of Law

The automatic stay goes into effect upon the filing of a bankruptcy case and prevents any entity from, among other things, attempting to collect a prepetition debt or exercising

control over property of the estate. 11 U.S.C.A. § 362(a) (West 2004). Thus, a postpetition foreclosure sale of property of the estate would violate the stay. In the event a creditor willfully violates the stay, the debtor “shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” Id. § 362(h).

In this case, the Court retroactively annulled the stay by order of March 7, 2005. By that order, the Court also validated the foreclosure sale. Such orders are contemplated by § 362. Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.), 749 F.2d 670, 675 (11th Cir. 1984); 3 Collier on Bankruptcy ¶ 362.07[1] (15th ed. rev’d 2004) (“[I]t seems clear that a court has the power to validate actions taken in violation of the stay . . . by annulling the stay retroactively.”). Consequently, with respect to First National and Mr. Fricks, there is no stay violation upon which to base a finding of contempt or to order sanctions. Debtors’ motion must, therefore, be denied.

An Order in accordance with this Opinion will be entered on this date.

Dated this 29th day of March, 2005.

James D. Walker, Jr.
United States Bankruptcy Judge

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ORDER

In accordance with the Memorandum Opinion entered on this date, the Court hereby DENIES Ronald and Joann Waller's motion to hold person in contempt for violation of the automatic stay.

So ORDERED, this 29th day of March, 2005.

James D. Walker, Jr.
United States Bankruptcy Judge